IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.323 OF 2002

Mr. G. Ravinder Reddy ...Petitioner.

V/s

The State of Maharashtra
and Ors. ...Respondents.

Mr. Nitin Jamdar for the petitioner.
Mr. A.V. Doijode for respondent No.2.
Mr. A.S. Shitole, APP for the State.

CORAM: V.M.KANADE,J.

DATE: 24TH MARCH 2005

P.C.:

1. Heard the learned Counsel for the petitioner and the learned Counsel for respondent No.2.

2. Petitioner is challenging the order of issuance of process by the Trial Court on a complaint filed under section 138 of the Negotiable Instruments Act by respondent No.2.

3. It is submitted by the learned Counsel appearing on behalf of the petitioner that the petitioner is not a Director of the Company on the date when the cheque was issued. He submitted that the petitioner had resigned on 30/3/1999. He invited my attention to Form 32 which was annexed at Exhibit-B at page 23 to the Petition which indicated that the petitioner had

resigned on 30/3/1999. The application for recall of the process was filed in the Trial Court. However, the said application was rejected. A revision was filed in the Sessions Court. However, the said revision was also rejected. Both the Lower Courts held that the question whether the petitioner was in-charge of the Company at the time when the cheque was issued or not was the question which could be decided only after the evidence is adduced in the trial. The learned Counsel appearing for the petitioner submits that both the Lower Courts erred in passing the said order since Form 32 was executed in the manner provided by law and that too within 30 days and, therefore, it was filed within the period of limitation. He further submitted that the presumption was raised regarding genuineness of the document in view of the provisions of section 77 of the Evidence Act.

4. I am unable to accept the submissions made by the learned Counsel for the petitioner. The question whether the petitioner was a Director or not at the time when the cheque was issued is a question of fact which will have to be decided by the Trial Court. In the complaint a specific averment has been made that the petitioner was a Director of accused No.1 -

Company and that he was in-charge of and responsible for the conduct of the business of accused No.1 - Company. If no material is produced to dispute the correctness of the document produced and relied upon by the petitioner, the Trial Court shall decide the issue on merits and in accordance with law.

5. Accordingly, Criminal Writ Petition is dismissed. However, all the questions raised in this Petition are kept open. Trial Court to decide the same on merits and in accordance with law after the evidence is adduced by both the parties. If an application is made for exemption by the petitioner in the Trial Court, the Magistrate may consider it on merits and unless the presence of the petitioner is required for whatever reason, such an application may not be rejected. Hearing of the Trial is expedited. Trial Court to decide the Criminal case within a period of three months.

6. Criminal Writ Petition is disposed of in the above terms.

V.M. KANADE, J.